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Comments: **Green** is explanatory; **Blue** is for discussion; **Red** is issue remaining to be addressed

Article 14-10: NONCONFORMITIES

Comment [j1]: General Note: WHERE APPROPRIATE, I HAVE CHANGED PERMITTED TO ALLOWED, SINCE PERMIT HAS PARTICULAR CONNOTATION.

14-10.1 —GENERAL PROVISIONS

(A) —Purpose and Intent

~~Within the districts established by this Chapter 14, or by amendments that may later be adopted, there exist lots, structures, and uses of land and structures that were lawful before this chapter was passed or amended, but that would be prohibited or regulated and restricted under its provisions or those of its amendments. It is the intent of this article section to allow permit Legal Nonconforming Use Legal Nonconforming Uses these nonconformities to continue until they are ceased, and to allow permit Legal Nonconforming Structure Legal Nonconforming Structures to be maintained until they are removed, but not to encourage their survival. Nonconforming uses are deemed declared by this section to be incompatible with Ppermitted uses in the districts involved. It is further the intent of this article to limit section that nonconforming Structures so they are ities shall not allowed to not be enlarged, expanded, extended, or reconstructed to continue nonconformity after major damage, or used as grounds for adding other sStructures or uses prohibited elsewhere in the same district, unless otherwise allowed by this Chapter.~~

Comment [CLG2]: revised for clarity; substantive purpose and intent not changed

Comment [CLG3]: per PC Subcomm

(B) —~~Extension or Enlargement~~ Construction in Progress

(1) ~~A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged, or include other uses of a nature which would be prohibited in the district involved.~~

Comment [CLG4]: This is addressed below

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(2) — To avoid undue hardship, ~~Nothing in Chapter 14~~ this Chapter 14 shall be deemed to require a change in the plans, construction, or designated use of any **S**tructure on which Actual Construction **is in compliance with all Permits and** was lawfully begun prior to the effective date of adoption or amendment of this chapter **rendering the **S**tructure or designated use **Nonconforming**** and upon which Actual building Construction **has been diligently carried on.**

Comment [CLG5]: this implicates zoning variance language, which is not the intent.

Comment [CLG6]: ties this time period to the active permit time period (1-2 years)

Comment [CLG7]: text reformatted for readability

(3) — "Actual construction" is defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except, that where demolition or removal of an existing structure has been substantially begun preparatory to new construction, such demolition or removal shall be deemed to be actual construction; provided, that work shall be diligently carried on until completion of the new construction involved. However, such construction shall be completed within not more than two years from the date of the adoption or amendment of this chapter.

Comment [CLG8]: relocated to definitions (14-12)

(C). —Repairs and ~~Maintenance~~ **Alterations**

Repair, maintenance or replacement of ~~Interior **N**on-**S**tructural **E**lements, fixtures, wiring or plumbing is allowed o~~

Comment [CLG9]: added per PC Subcommittee

On ~~a~~ Any Legal Nonconforming Structure, **or any **S**tructure** building **containing** devoted in whole or in part to any Legal Nonconforming Use **Legal Nonconforming Use, but alteration of the Building Structure or Envelope is not allowed,** work may be done on ordinary repairs, or on repair or replacement of ~~interior non structural elements~~ nonbearing walls, fixtures, wiring, or plumbing **is permitted;** provided, that the cubic content of the building as it existed at the time of the effective date of this chapter shall not be ~~increased.~~ **No alteration of the building structure or building envelope of A Legal Nonconforming Structure, or structure containing a Legal Nonconforming Use, is permitted.** Nothing in this chapter shall be deemed to prevent **s** the strengthening or restoring to a safe condition **alteration or repairs necessary to ensure the safety of any **S**tructure that has been** building or part thereof declared to be unsafe by any official charged with protecting public safety, on order of such official.

Comment [CLG10]: The limitation applies to structures that may be legal, but that contain nonconforming uses, in order to further the goal of elimination of the nonconforming uses.

Comment [CLG11]: could apply to columns, metal frame, etc., replacement of which would be more than alteration

Comment [CLG12]: this is addressed below

Comment [CLG13]: Revised for clarity and readability; substance unchanged

(D) —Determination of Nonconformity **Status**

Comment [CLG14]: This would potentially require all current nonconformities to register within a certain amount of time. No indication that we want to do this at this time.

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~~The Land Use Director shall determine the status of any Nonconforming Lot, Nonconforming Use, Nonconforming Structure or Nonconforming Sign. Appeals of the Land Use Director's determination shall be pursuant to Section 3.17. [RESERVED]~~

Comment [CLG15]: added in section to clarify LUD's authority

(E) —Change of Tenancy or Ownership

~~[RESERVED] Change in tenancy or ownership of A Legal Nonconforming Lot, or a Lot containing a Legal Nonconforming Structure or Legal Nonconforming Use, without change in the use or Structure, shall not affect the status of that Lot, Structure or Use, except as provided in Section 14-10.5.~~

Comment [CLG16]: Required by *Mechem v. City of Santa Fe*

14-10.2. —LEGAL NONCONFORMING USES

Comment [CLG17]: Added to distinguish nonconforming uses that are not legal, and simply code violations.

~~Where, at the effective date of this chapter, lawful use of land exists that is made no longer permissible A Legal Nonconforming Use involving no individual structures with a replacement cost exceeding \$1000, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:~~

Comment [CLG18]: definitions relocated to 14-12

(A) No Increase in Nonconformity

~~—Aa— NO such Legal Nonconforming Use shall not be enlarged, intensified, increased nor extended to occupy a greater area of land or Structure than was occupied at the effective date of this chapter time the use became nonconforming and a no-5 Structure containing a Legal Nonconforming Use shall not be enlarged, extended, reconstructed, moved or structurally altered unless the Legal Nonconforming Use of the Structure is terminated. Ordinary repairs and maintenance are permitted under this paragraph, but new construction is prohibited.~~

Comment [CLG19]: Clarifies the effect of amendments as well as original adoption of chapter

Comment [CLG20]: relocated from 10.4(A)

Comment [CLG21]: added by PC Subcommittee

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(B). No Relocation of Nonconformity

~~Aa~~ ~~No such Legal Nonconforming Use~~ Legal Nonconforming Use shall not ~~shall may~~ be moved in whole or in part to any other portion of the ~~land lot or parcel~~ occupied by ~~that~~ such use at the ~~effective date of this chapter~~ time the use became nonconforming;

Comment [CLG22]: revised for consistency

Comment [CLG23]: The effective date of the chapter may be different than the date it became nonconforming

(C). Cessation of Nonconformity

~~if any such~~ Legal Nonconforming Use of land or a Structure ceases for any reason for a period of more than ~~one hundred eighty~~ 180 days, ~~or is replaced by a permitted use, that use may not be resumed and~~ any subsequent use of ~~the~~ such land or Structure shall conform to the ~~provisions specified by this chapter for the district in which such land is located; and~~

Comment [CLG24]: relocated from below

Comment [CLG25]: 'this chapter' includes all the rest

(D) No Additional Structures

~~No a~~ Additional Structures ~~not conforming to the requirements of this chapter, shall~~ not be erected in connection with ~~a~~ such Legal Nonconforming Use of land or Structure; and

Comment [CLG26]: Deleted to make limitations on expansion consistent

(F) Change of Use

A Legal Nonconforming use may, as a special exception, be changed to another Legal Nonconforming use if the Board of Adjustment finds that the proposed use is equally appropriate or more appropriate to the district than the existing Legal Nonconforming use, and the new used does not increase the level of nonconformity. In allowing such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the purposes of this chapter.

Comment [CLG27]: relocated from below, kept in per staff comments (GTS)

~~(E) Expansion of an existing residential suite hotel or motel as provided for in §14-6.2(C)(8).~~

Comment [CLG28]: these would presumably be worth more than \$1,000

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14-10.3 —LEGAL NONCONFORMING STRUCTURES

~~Where a lawful structure exists at the effective date of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such Legal Nonconforming Structures~~~~LEGAL NONCONFORMING STRUCTURES~~ may be continued maintained so long as it remains otherwise lawful, subject to the following provisions:

Comment [CLG29]: This is addressed in the definition

(A) No Increase in Nonconformity

~~—A~~ No ~~Legal Nonconforming~~ such Structure shall not ~~may~~ be enlarged or altered in a way that increases its nonconformity; provided, however, that additions that do not increase the nonconformity are allowed by this section;

Comment [CLG30]: per staff comments

(B) Reduction in Nonconformity

~~Any~~ Legal Nonconforming Structure that is modified in such a way as to eliminate or to reduce the degree or extent of nonconformity, including demolition of a ~~Nonconforming~~ feature for any reason, shall not be reconstructed except in conformance with this chapter;

Comment [CLG31]: To reflect original intent and disfavor nonconforming uses

(C) Substantial Destruction of Nonconforming Structure

~~—If A Legal Nonconforming~~ Should such Structure ~~is~~ be destroyed by any means to an extent of more than ~~sixty-six and two-thirds~~ 66-2/3 percent of the existing Building structure and shell (exterior skin and framing, excluding window assemblies and non-structural roofing material) ~~its floor area at time of destruction,~~ it shall not be reconstructed except in conformity with the provisions of this chapter, and if any structure containing a legal nonconforming use ~~Legal Nonconforming Use is similarly destroyed, the legal nonconforming use~~ Legal Nonconforming Use shall not be resumed.;

Comment [CLG32]: This calculations has proved problematic in the past; This suggested language is derived from LEED NC, MR 1.1 – revised after 6/16/09 PC subcomm meeting

Comment [CLG33]: relocated from 10.4F

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(DC) Relocation of Legal Nonconforming Structure

~~_____~~ If a Legal Nonconforming Structure is ~~_____~~ ~~Should such structure be~~ moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

14-10.4 NONCONFORMING USES OF STRUCTURES AND PREMISES IN COMBINATION

Comment [CLG34]: combined with 10.2

~~If a lawful use involving an individual structure with a replacement cost exceeding \$1,000, or if such structure and premises in combination, exists at the effective date of this chapter, which use would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:~~

~~(A) _____ No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;~~

~~(B) _____ Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of the effective date of this chapter, but no such use shall be extended to occupy any land outside such building;~~

Comment [CLG35]: This permission has been removed in connection with more modern views of terminating Legal Nonconforming Uses

~~(C) _____ If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may, as a special exception, be changed to another~~

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~~nonconforming use; provided, that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the purposes of this chapter;~~

Comment [CLG36]: relocated to above

- (D) ~~Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed;~~

Comment [CLG37]: relocated to 10.2(C)

- (E) ~~When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for 180 days, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located; and~~

- (F) ~~Where nonconforming use status applies to a structure, or structure and premises in combination, removal, or destruction of the structure shall eliminate the nonconforming status of the land.~~

~~"Destruction" of the structure, for the purposes of this section, means damage to an extent of more than sixty six and two thirds percent of its floor area at time of destruction.~~

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(A) ~~The provisions of this section shall apply to lawfully created lots of record at the effective date of this chapter, or at the effective date of subsequent amendments to this chapter that cause lawfully created lots of record to become nonconforming.~~

Comment [CLG38]: addition of definition renders this subsection unnecessary

(A) Use of Legal Nonconforming Lot

Notwithstanding limitations imposed by other provisions of this chapter with regard to minimum Lot size or width or maximum density, a Single-Family Dwelling and Accessory Buildings may be erected on a single Legal Nonconforming Lot in a district in which Single-Family Dwellings are allowed; provided that the Lot does not adjoin a commonly owned Lot, except as provided in Subsections (C) and (D) of this section. Yard Setback dimensions and other requirements that do not involve area or width of the Lot shall conform to the regulations for the district in which the Lot is located.

~~In any district in which Single-Family Dwellings are allowed, notwithstanding limitations imposed by other provisions of this chapter, a Single-Family Dwelling and Acustomary accessory Bbuildings may be erected on any Single Lot. Such a lot must be in separate ownership and not of continuous frontage with other Llots in the same ownership, except as provided in paragraphs (c) and (d) of this section. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided, that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.~~

Comment [CLG39]: paragraph revised for readability; no substantive change

(B) Adjoining Lots

~~Within the R-5, R-6, R-7, and R-7(I), R-8 and R-9 districts, two adjoining commonly-owned Legal Nonconforming Lots may each be developed in accordance with the provisions of Subsection paragraph (B) of this section if where each of the lots has a minimum lot area of four~~

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thousand~~4,000~~ square feet and has a width, depth and frontage equal to at least eighty~~80~~ percent of the minimum dimensions required by this chapter. Development of one or more adjoining, commonly-~~Owned~~ owned Legal Nonconforming Lots shall require s the approval of a Special Exception by the Board of Adjustment Conditional Use Permit, which approval shall be based on a the following findings: that t

Comment [CLG40]: Since this is the default lot size, this provision really allows development of adequately sized lots with substandard dimensions.

Comment [CLG41]: revised terminology

Comment [CLG42]: see below

(1) ~~Development of each lot shall be in accordance with a site plan which demonstrates compliance with yard dimensions and other requirements not involving area or width, or both, for the district within which the lot is located.~~

Comment [CLG43]: This does not need to be reviewed on special exception, as it is a simple requirement

(2) ~~The development is consistent with the overall L~~ot patterns and development characteristics of the surrounding neighborhood regardless of the area or width of the Legal Nonconforming Lot.

~~If, subsequent to the approval of a special exception under this section, a variance is requested for development of the property, the early neighborhood notification and special exception processes shall be repeated.~~

Comment [CLG44]: As drafted, this was a problem because it caused a landowner to lose the special exception simply for *requesting* a variance. Given the required noticing and public hearing for a variance, this requires serves no particular need.

(~~C~~) Combination of Lots

Contiguous ~~Adjoining~~ commonly-~~owned~~ Lots may be combined in order to meet the standards of Subsections paragraphs (A) and (C)B of this section. The boundaries between adjoining commonly-~~owned~~ Lots may be adjusted in order to meet the standards of those subsections paragraphs (A) and (B)C of this section, provided that no Lot with an area of less than one thousand nine hundred~~1,900~~ square feet may be expanded to create an individually developable lot.

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14-10.65 —NONCONFORMING SIGNS

Existing Signs rendered Nonconforming by adoption of this chapter or any amendment to this chapter thereto, or by annexation into the City shall be removed or modified to conform to this chapter within five years.

Comment [CLG45]: relocated from 14-8.10, consolidated and revised.

~~(A)~~ Extension of Time

In any case where the provisions of this chapter require the removal of a nonconforming sign or advertising structure by a certain date, the Division may grant additional time as may be necessary to remove the same if the following conditions have been met:

(1) The person desiring an extension of time shall file a written application with the Division showing that owing to special conditions a literal enforcement of the provisions of the above-mentioned sections will result in unnecessary hardship, and specifying the exact number of days required to effect the removal of the nonconforming sign or advertising structure;

(2) The division shall grant extensions of time only for the period actually required by the applicant but no extension shall be granted for more than 90 days.

Comment [CLG46]: This is variance language, and a variance cannot be granted by the LUD. With a 5 year amortization, it is unclear why an additional 90 days is necessary. In any event, a standard variance would be the correct procedure.